

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

KIMBERLY M. MITCHELL,

Plaintiff,

v.

**POSTMASTER GENERAL OF THE
UNITED STATES POSTAL SERVICE,**

Defendant.

Case No. 3:18-cv-01000-AC

ORDER

Kimberly M. Mitchell, 1218 W HCR Hwy., Troutdale, Oregon 97060. Plaintiff *pro se*.

Billy J. Williams, United States Attorney, and Jared D. Hager, Assistant United States Attorney, United States Attorney's Office for the District of Oregon, 1000 SW Third Avenue, Suite 600, Portland, Oregon 97204. Attorneys for Defendant.

IMMERGUT, District Judge.

On February 20, 2020, Magistrate Judge John Acosta issued his Findings and Recommendation ("F&R"), recommending that this Court grant the Partial Motion to Dismiss (ECF 49) filed by Defendant, the Postmaster General of United States Postal Service, and strike the allegations in paragraphs 31–36, 38–45, 47–50, and 53–60 of the First Amended Complaint


(ECF 35) as irrelevant, immaterial, or impertinent.¹ ECF 63. No party filed objections.

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, *sua sponte*,” whether de novo or under another standard. *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee to the Federal Rules recommends reviewing for clear error when no timely objection is filed. Fed. R. Civ. P. 72(b) advisory committee’s note from 1983.

As no party filed objections, this Court has reviewed the F&R (ECF 63) for clear error. Finding none, this Court adopts it in full. Defendant’s Partial Motion to Dismiss (ECF 49) is GRANTED, and the allegations contained in paragraphs 31–36, 38–45, 47–50, and 53–60 of the First Amended Complaint (ECF 35) are STRICKEN.

IT IS SO ORDERED.

DATED this 8th day of May, 2020.


Karin J. Immergut
United States District Judge

¹ Although more inclusive than the paragraph numbers summarized in the F&R’s conclusion, ECF 63 at 39, these paragraph numbers reflect Judge Acosta’s findings and are therefore adopted by this Court. *See id.* at 37–39.